

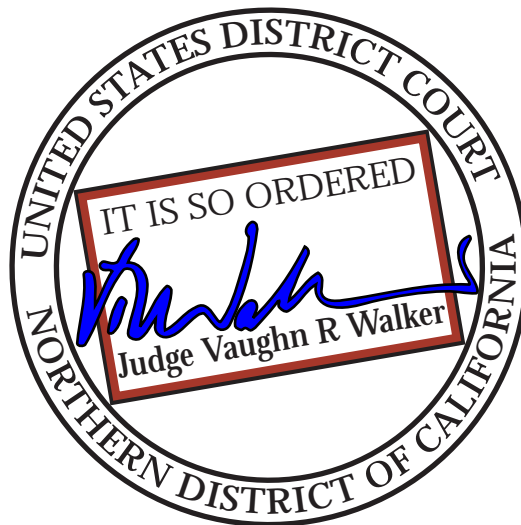
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,)
12)
Plaintiff,)
13)
v.)
14)
NET PROCEEDS FROM THE SALE OF REAL)
PROPERTY AND IMPROVEMENTS)
15 LOCATED AT 935-945 FOLSOM STREET,)
SAN FRANCISCO, CALIFORNIA,)
16)
Defendant.)
17

C 05-4412 VRW

STIPULATION AND ORDER
STAYING THE INSTANT CASE



18
19
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21
22
23
24 Dated: February 17, 2006
25
26
27
28

By order entered on January 9, 2006, the Court concluded that the instant civil forfeiture action is related to a pending criminal case and to a pending civil forfeiture action; all three cases have been assigned to the Honorable Vaughn R. Walker. *See* Related Case Order, filed January 9, 2006. The related civil forfeiture action is *United States v. \$2,526.70 from Citibank Account No. 40017922317, et al. ("Bank Account Forfeiture case")*, C 04-0933 VRW (Complaint filed March 9, 2004 and stayed by Stipulation and Order, filed October 15, 2004) and the related criminal case is *United States v. Jimmy Quan a/k/a Toha Quan, Anna Wong, a/k/a/ Anna You Nor Wong, Jenny Wong, a/k/a Jenny Yee Nor Wong, Bick Wong a/k/a Bick You Wong*, CR 04-0323 VRW (filed September 30, 2004; Superseding Indictment filed August 12, 2005).

The United States and the three claimants in the previously filed civil forfeiture action, No. C04-0933 VRW, stipulated to a stay of that action pending the resolution of the related criminal case. *See* No. 04-0933 VRW, Stipulation and Order, filed October 15, 2004. In that action, the claimants are Anna Wong, Nancy Quan and the Trustee for the estate of TOMI, LLC, Mohamed Poonja, in the bankruptcy case. *See* In Re: TOMI, LLC, Case No. 03-31971 (Bankr. Ct., N.D. Cal.). Anna Wong is a defendant in the pending criminal case and Nancy Quan is her daughter.

In this action, only two claimants have filed timely claims in order to appear and defend defendant Net Proceeds from the Sale of Real Property and Improvements Located at 935-945 Folsom Street, San Francisco, California. The two claimants are the Trustee of the TOMI, LLC bankruptcy action, Mohamed Poonja, and TOMI, LLC, by Nancy Quan.¹ *See* In Re: TOMI, LLC, Case No. 03-31971 (Bankr. Ct., N.D. Cal.). On order from the Bankruptcy Court, the real property at 935-945 Folsom was sold to preserve the value of that asset. *See* No. 03-31971, Order Authorizing (1) Sale of Real Property Free and Clear of the Liens and Interest, and (2) Payment of Real Estate Commission, filed May 18, 2005 and modified by order dated October

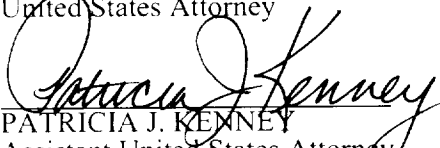
¹ The United States served all persons or entities who might have had an interest in defendant. *See* Certificate of Service, filed November 10, 2005. The United States also published notice of this forfeiture action each week for three consecutive weeks in a newspaper of general circulation with the last notice having been published on December 15, 2005. *See* Proof of Publication of Amended Forfeiture Action, filed January 31, 2006.

24, 2005 in No. 03-31971 (Bankr. Ct., N.D. Cal.). Following the sale of the real property located at 935-945 Folsom Street, San Francisco, the United States sued the net proceeds from that sale which net proceeds became defendant in this action. *See* No. 03-31971 (Bankr. Ct., N.D. Cal.), (1) Stipulation Re: The Filing of Complaint for Forfeiture and the Proceeds to be Arrested, submitted October 24, 2005 (Exhibit A attached) and (2) Order filed October 28, 2005 (Exhibit B attached).

UPON CONSIDERATION of the foregoing and pursuant to 18 U.S.C. § 981(g), the United States and claimants agree, subject to this Court's approval, that the instant civil forfeiture action also be stayed pending the resolution of the related criminal case, No. 04-0933 VRW, in district court.

KEVIN V. RYAN
United States Attorney

Dated: February 8, 2006


PATRICIA J. KENNEY
Assistant United States Attorney

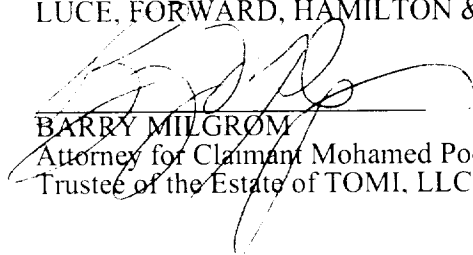
CORPORATE COUNSEL LAW GROUP, LLP

Dated: February __, 2006

JOHN CHU
Attorney for Claimant TOMI, LLC
filed by Nancy Quan

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

Dated: February 7, 2006


BARRY MILGROM
Attorney for Claimant Mohamed Poonja,
Trustee of the Estate of TOMI, LLC

PURSUANT TO THE FOREGOING STIPULATION, IT IS SO ORDERED ON THIS ____
DAY OF _____, 2006.

HONORABLE VAUGHN R. WALKER
Chief Judge, United States District Court

24, 2005 in No. 03-31971 (Bankr. Ct., N.D. Cal.). Following the sale of the real property located at 935-945 Folsom Street, San Francisco, the United States sued the net proceeds from that sale which net proceeds became defendant in this action. See No. 03-31971 (Bankr. Ct., N.D. Cal.). (1) Stipulation Re: The Filing of Complaint for Forfeiture and the Proceeds to be Arrested, submitted October 24, 2005 (Exhibit A attached) and (2) Order filed October 28, 2005 (Exhibit B attached).

UPON CONSIDERATION of the foregoing and pursuant to 18 U.S.C. § 981(g), the United States and claimants agree, subject to this Court's approval, that the instant civil forfeiture action also be stayed pending the resolution of the related criminal case, No. 04-0933 VRW, in district court.

KEVIN V. RYAN
United States Attorney

Dated: February 8, 2006

PATRICIA J. KENNEY
Assistant United States Attorney

CORPORATE COUNSEL LAW GROUP, LLP

Dated: February 10, 2006

JOHN CHU
Attorney for Claimant TOMI, LLC
filed by Nancy Quan

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

Dated: February __, 2006

BARRY MILGROM
Attorney for Claimant Mohamed Poonja,
Trustee of the Estate of TOMI, LLC

PURSUANT TO THE FOREGOING STIPULATION, IT IS SO ORDERED ON THIS ____
DAY OF ____, 2006.

HONORABLE VAUGHN R. WALKER
Chief Judge, United States District Court

EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 03-31971
TOMI, LLC,)	
)	Chapter 7
Debtor)	

**STIPULATION RE: THE FILING OF COMPLAINT FOR FORFEITURE
AND THE PROCEEDS TO BE ARRESTED**

The United States, through its undersigned counsel, and, subject to this Court's approval, Mohamed Poonja, Chapter 7 Trustee, through his undersigned counsel, stipulate as to (1) when the United States will file its Complaint for Forfeiture against the Net Proceeds of the Sale of 935-945 Folsom Street, San Francisco, California, in the Northern District of California ("defendant Net Proceeds") and (2) how the defendant Net Proceeds will be calculated because,

1 following the filing of the Complaint for Forfeiture, the Clerk will issue an arrest warrant for the
2 arrest of the defendant Net Proceeds.

3 Recitals

4 A. On July 8, 2003, TOMI LLC ("TOMI"), as debtor, filed a Voluntary Petition
5 under Chapter 11 of the Bankruptcy Code. At a later date, Mohamed Poonja ("Trustee") was
6 appointed as Chapter 11 Trustee for TOMI and, following the conversion of the case to Chapter
7 7, continues to act as Chapter 7 Trustee.

8 B. Among the assets of the bankruptcy estate is real property and improvements,
9 including a commercial building, which is located at 935-945 Folsom Street, San Francisco,
10 California ("935 Folsom"). On or about May 19, 2005, the Bankruptcy Court entered its Order
11 Authorizing (1) Sale of Real Property Free and Clear of the Liens and Interests, and (2) Payment
12 of Real Estate Commission ("Sale Order"), authorizing the Trustee to consummate the proposed
13 sale of 935 Folsom for \$4.1 million.

14 C. In a Superseding Indictment filed on August 12, 2005, there are, *inter alia*,
15 criminal allegations seeking judicial forfeiture of 935 Folsom. *See United States v. Jimmy Quan*
16 *a/k/a Toha Quan, Anna Wong, a/k/a/ Anna You Nor Wong, Jenny Wong, a/k/a Jenny Yee Nor*
17 *Wong, Bick Wong a/k/a Bick You Wong*, CR 04-0323 VRW (Superseding Indictment filed
18 August 12, 2005). Because defendants sought adequate time to prepare, the Honorable Vaughn
19 R. Walker did not schedule trial in the criminal case until June 5, 2006.

20 D. Prior to the Superseding Indictment having been returned, the United States filed
21 a motion in this Court in May of 2005 requesting an order which declared that, if the United
22 States filed a civil complaint for forfeiture in the Northern District of California, that the civil
23 action would be exempt from the automatic stay in this bankruptcy action and, in the alternative,
24 the United States asked the Court to grant relief from the stay to file its civil forfeiture action. At
25 the June 17, 2005 hearing on that motion, the Bankruptcy Court granted the motion and, by order
26 entered on August 25, 2005, the Court issued a written order granting the relief requested.

27 E. The United States has no objection to the sale of 935 Folsom to preserve the value
28 of that asset. The United States plans to file a civil forfeiture action against the net proceeds

from the sale of 935 Folsom on or about the date of the sale, and has informed the Trustee of its plans. *See* Order Declaring the Complaint for Forfeiture Exempt from the Stay and, Alternatively, Granting Relief from the Automatic Stay, entered August 25, 2005. In civil forfeiture cases which involve a related criminal case, such as CR 04-0323 VRW, it is common for either the United States or for claimants who are also defendants in the criminal case to request a stay of the civil action and for the civil action to be stayed until resolution of the criminal case. *See* 18 U.S.C. § 981(g). Thus, it is possible that, once filed, the civil forfeiture action filed by the United States will be stayed for a period of time until resolution of the related, criminal case.

F. Upon the filing of a civil forfeiture action against defendant Net Proceeds, the Clerk must issue a summons and warrant under the authority of the District Court to arrest defendant Net Proceeds in order to preserve it during the pendency of the civil forfeiture action. *See* Rule C(3), Supplemental Rules for Certain Admiralty and Maritime Claims. The United States Marshals Service effects the arrest and, in cases involving funds, it deposits the funds in an appropriate interest-bearing account.

Stipulation

The United States and the Trustee, subject to the Court's approval, stipulate as follows:

1. The purpose of this stipulation is for the United States and the Trustee to agree on how defendant "Net Proceeds" in the civil forfeiture action is to be defined and how the arrest of defendant "Net Proceeds" will be accomplished.

2. Defendant "Net Proceeds" will be the seller's gross proceeds from the sale of 935 Folsom after deducting the costs and expenses (a) specified in paragraph 4 below at the close of escrow and (b) in paragraph 8 below, and after approval of the Bankruptcy Court, where necessary.

3. The Trustee obtained a writ to evict the tenants from 935 Folsom which was provided to the United States Marshals Service ("USMS"), and the USMS evicted the tenants on or about August 31, 2005. Thereafter, the Trustee proceeded with dispatch to inventory the personal property remaining at 935 Folsom after the eviction, and to give notice to interested

parties that the personal property would be disposed of if the owners did not claim it and remove it from the premises at 935 Folsom. Pursuant to that notice, the Trustee plans to take necessary actions to dispose of the personal property remaining at 935 Folsom either by auction, salvage or disposal. Following the disposition of the personal property, the Trustee will sell 935 Folsom in accordance with prior orders of this Court. The Trustee agrees to give the United States as much advance notice as possible as to the date when the Trustee signs documents and as to the date that escrow will close.

4. The Trustee agrees to instruct the title company to deduct and pay the following items at the close of escrow of 935 Folsom:

a. Closing Costs: Customary closing costs in the City and County of San Francisco paid by a seller, including title and escrow fees, real estate commission and costs, will be paid in full at the close of escrow. Prior to the close of escrow, the title company will provide the United States with an itemized copy of the estimated closing costs. If the United States disagrees with any of the itemized costs, it will inform the Trustee of its objection in writing within 48 hours or sooner, if possible. If the Trustee disagrees with the objection of the United States, the Trustee will file a motion with the Bankruptcy Court on shortened time to resolve whether the cost is a customary cost which should be paid by the Trustee.

b. 2W Lien: All principal, interest and costs under the deed of trust recorded by 2W Investments, Inc. ("2W") shall be paid in full by the seller at the close of escrow, except that \$150,000 of the funds that would otherwise be paid to 2W will be withheld by the Trustee in accordance with the terms of Paragraph 6 of the Sale Order. *See* Recital, B, *supra*.

c. Real Estate Taxes: All real estate taxes, including interest and penalties, due and payable against 935 Folsom will be paid in full at the close of escrow. Real estate taxes that are not yet due and payable shall be prorated between the buyer and seller, and the seller's allocation shall be paid at the close of escrow in accordance with the custom in the City and County of San Francisco.

5. After payment of the items listed in paragraph 4 at the close of escrow, the Trustee shall deposit the remainder of the proceeds ("Remainder of the Proceeds")(including the

\$150,000 which is withheld from 2W as described in paragraph 4.b), in a separately established, interest-bearing account by itself and under the Trustee's control.

6. After the United States files a civil forfeiture action against defendant Net Proceeds from, the Clerk is required to issue a warrant for arrest of defendant Net Proceeds in order to preserve defendant Net Proceeds during the pendency of the action. *See* Rule C(3)(a), Supplemental Rules for Certain Admiralty and Maritime Claims. The United States will serve the Trustee with that warrant for arrest by serving it on counsel for the Trustee, Barry Milgrom.

7. The Trustee will comply with the warrant for arrest in a two-step process by providing two separate checks. This is because the certain costs of this bankruptcy action will not be quantified immediately at the time of the sale of 935 Folsom.

8. Within 14 days of receipt of the Remainder of the Proceeds, or such other time to which the Trustee and the United States agree in writing, the Trustee will make reasonable estimates of the maximum cost of each of the following:

a. Professionals: The fees and expenses of the Trustee and all professionals allowable pursuant to Bankruptcy Code § 330(a).

b. Insurance: The cost of insurance, if any, for 935 Folsom which is due and owing up to the close of escrow on 935 Folsom.

c. Income Taxes/Fees: Any gross receipts tax/fee in connection with 935 Folsom which the Franchise Tax Board imposes because the seller of 935 Folsom is a limited liability company.

d. Eviction of Tenants and Personal Property Left on the Premises: The costs associated with the eviction of the tenants and their personal property from 935 Folsom prior to its sale, including costs of the United States Marshals Service and costs associated with inventory, salvage, storage, sale or other disposition of the unclaimed personal property left on the premises in order to comply with, among other laws, California Code of Procedure § 1174(g), (h) and (i).

9. Within 14 days of receipt of the warrant for arrest of the "Net Proceeds," or such other time to which the Trustee and the United States agree in writing, the Trustee shall

1 provide a check to the United States Marshals Service in the amount of the Remainder of the
2 Proceeds (1) less the reasonable estimated, maximum amounts of the items listed in paragraph 8
3 above and (2) less the \$150,000 withheld from 2W as described in paragraph 4.b., *supra*, and
4 pursuant to the Sale Order, *see* Recital B, *supra*.

5 10. Within 120 days of receipt of the Remainder of the Proceeds, or such other time
6 to which the Trustee and the United States agree in writing, the Trustee will expend his best
7 efforts to obtain actual costs for each of the items in paragraph 8 and, subject to the Bankruptcy
8 Court's approval, pay each item.

9 11. Within 120 days of receipt of the Remainder of the Proceeds, or such other time
10 to which the Trustee and the United States agree in writing, the Trustee will expend his best
11 efforts, consistent with paragraph 6 of the Sale Order, *see* Recital B *supra*, to determine whether
12 TOMI LLC owes to 2W all or any portion of the \$150,000 which will be withheld at the close of
13 escrow and to obtain this Court's approval to pay such amount.

14 12. The Trustee will deposit all income, credits or rent generated by 935 Folsom in
15 the account with the Remainder of the Proceeds and those amounts will be considered as part of
16 the Remainder of the Proceeds. Interest accruing on the Remainder of the Proceeds will also be
17 considered to be a part of the Remainder of the Proceeds.

18 13. After all items in paragraph 8 have been paid and after a determination of the
19 amount, if any, to be paid to 2W from the \$150,000 is made and paid, the Trustee will complete
20 his compliance with the warrant for arrest of defendant Net Proceeds by providing a second
21 check to the United States Marshals Service for the Remainder of the Proceeds which amount
22 will include all interest accrued on the account in which the Remainder of the Proceeds was
23 maintained.

24 14. The Trustee agrees to act promptly to seek approval from the Bankruptcy Court
25 to pay the actual amounts of the items listed in paragraph 8 and to move to dismiss, or otherwise
26 close, this bankruptcy case, Case No. 03-31971.

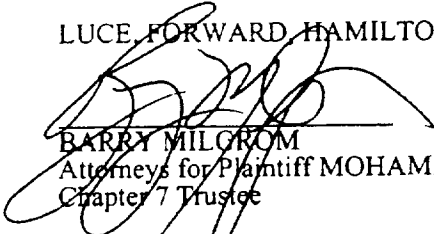
27 15. If for any reasons the District Court does not forfeit defendant Net Proceeds either
28 in connection with the criminal case, *United States v. Jimmy Quan a/k/a/ Toha Quan, Anna*

1 Wong, a/k/a Anna You Nor Wong, Jenny Wong, a/k/a/ Jenny Yee Nor Wong, Bick Wong, a/k/a
 2 Bick You Wong, CR 04-0323 (Superseding Indictment filed on or about August 7, 2005) or in
 3 connection with the civil forfeiture action which the government will file against defendant Net
 4 Proceeds, then the United States will notify the Bankruptcy Court, the Trustee and the counsel
 5 for the Trustee and cooperate with the Trustee who will file a motion to reopen this case in the
 6 Bankruptcy Court. The United States shall also cooperate with the Trustee in filing a motion
 7 with the District Court for an order requiring the government to deposit that portion of defendant
 8 Net Proceeds which has not been forfeited with the Trustee in this case after this case has been
 9 reopened.

10
 11 IT IS SO STIPULATED:

12 Dated: October 24, 2005

LUCE, FORWARD, HAMILTON & SCRIPPS LLP


 BARRY MILGROM
 Attorneys for Plaintiff MOHAMED POONJA,
 Chapter 7 Trustee

KEVIN V. RYAN
 United States Attorney

16
 17 Dated: October 24, 2005


 PATRICIA J. KENNEY
 Assistant United States Attorney

File a Stipulation:

03-31971 Tomi

U.S. Bankruptcy Court

Northern District of California

Notice of Electronic Filing

The following transaction was received from Milgrom, Barry entered on 10/24/2005 at 6:12 PM PDT and filed on 10/24/2005

Case Name: Tomi

Case Number: 03-31971

Document Number: 200

Docket Text:

Stipulation, Re: The Filing Of Complaint For Forfeiture And The Proceeds To Be Arrested Filed by Trustee Mohamed Poonja, Attorney U.S. Attorney. (Attachments: # (1) Certificate of Service) (Milgrom, Barry)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:H:\Bankruptcy\TOMI\Stip re Timing.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017961465 [Date=10/24/2005] [FileNumber=3920958-0] [7e9ae96a849bb3750f8f7c655b0fb728e19a47bdec277a22b063eef2499a69dd828537be753199cff6978d789ad65d6d87df1394f663958c4af0a01069cd432a]]

Document description:Certificate of Service

Original filename:H:\Bankruptcy\TOMI\Stip re Timing COS.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017961465 [Date=10/24/2005] [FileNumber=3920958-1] [6d5f52f03dc4e9b7bae1a94ba6ae7a644766dd63ac9cc93e9e2c9ec290c0d13aaadcbac74324b38101e084ddf959a29768c95852f10ac269b57ae7bf7963cf3]]

03-31971 Notice will be electronically mailed to:

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Page 2 of 2

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EXHIBIT B

Entered on Docket
October 28, 2005
GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



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Signed and Filed: October 28, 2005

A handwritten signature in black ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

32438-00001

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

TOMI, LLC,

Debtor.

Case No. 03-31971

Chapter 7

The Hon. Thomas E. Carlson

**ORDER RE: TIMING OF THE FILING BY THE UNITED STATES OF ITS
FORFEITURE COMPLAINT AGAINST THE "NET PROCEEDS" OF THE SALE OF
935-945 FOLSOM STREET, SAN FRANCISCO, CALIFORNIA
AND
COMPLIANCE OF THE TRUSTEE WITH THE ARREST WARRANT
ISSUED FOR THE "NET PROCEEDS" BY THE DISTRICT COURT**

1 UPON CONSIDERATION of the "Stipulation Re: Filing of Complaint
2 For Forfeiture and Proceeds to Be Arrested," and the entire record, this Court concludes that the
3 United States and the Trustee have arrived at a reasonable agreement as set forth in that stipulation
4 as to the how, following the filing of a Complaint for Forfeiture against defendant Net Proceeds
5 from the Sale of 935-945 Folsom Street, San Francisco, California, in the federal District Court for
6 the Northern District of California, the Trustee can comply with the Warrant for Arrest of
7 defendant Net Proceeds which will issue and how the defendant Net Proceeds, as defined in the
8 stipulation, are to be calculated. Accordingly, the Court authorizes Trustee to enter into the
9 stipulation and comply with its terms.

10 ***END OF ORDER***

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